

**REMARKS/ARGUMENTS**

The present application has been reviewed in light of the Final Office Action mailed April 19, 2007. Claims 62-70 and 73-74 remain pending in the application, claims 62 and 73-75 having been amended herein, claim 75 having been canceled herein, and claims 71, 72 and 76-99 having been previously withdrawn. Applicant reserves the right to present withdrawn claims 71, 72 and 76-99 in a Divisional and/or Continuation application, as needed. Reconsideration of the present application, as presented herein, is respectfully requested.

Claims 62 and 73-75 were objected to as containing a misspelling. Claims 62 and 73-74 were amended herein in a manner which is believed to correct the misspellings therein. Accordingly, the withdrawal of the objection to claims 62 and 73-74 is respectfully requested.

Claim 75 has been canceled herein and thus has rendered the objection thereto moot and thus should be withdrawn.

Claim 75 has been objected to as being duplicative of claim 73. Since claim 75 has been canceled herein, the objection to claim 75 has been rendered moot and should be withdrawn.

Claim 69 was rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement.

Applicant respectfully draws the Examiners attention to FIG. 8 and the associated description (page 9, line 14 to page 10, line 5) of the present specification for a discussion which provides support for the subject matter of claim 69. Accordingly, in view of the foregoing,

Applicant respectfully submits that the rejection of claim 69 under 35 U.S.C. 112, first paragraph, has been overcome and should be withdrawn.

Claims 62-64, 73 and 75 were rejected under 35 U.S.C. 102(b) as being anticipated by GB 2349798 to Plant (hereinafter, "Plant '798"). Applicant submits that claim 62, as amended herein, is allowable over Plant '798.

Claim 62 recites a flexible energy absorbing material comprising, *inter alia*, a resilient carrier with voids or cavities therein, said carrier being coated or impregnated or combined with a dilatant material, wherein the resilient carrier supports the dilatant material. (Emphasis added).

According to the present disclosure, as the carrier is coated, impregnated or combined with the dilatant material, the carrier does not have to be sealed within an envelope to support the dilatant material, as is required by Plant '798. (see page 10, lines 10-12). The ability to do away with any type of sealing envelope or like sealing structure for enclosing the carrier to prevent the dilatant material from running off is novel over the art of record because a person having ordinary skill in the art would expect that the dilatant material would escape from the carrier in the absence of such a sealing envelope or like sealing structure. In accordance with the present disclosure, Applicant has discovered that when the dilatant material is combined, impregnated or coated on the carrier, as recited in claim 62, that there is no need to encapsulate the carrier in order to stop the dilatant material from escaping.

The Examiner is reminded that pursuant to M.P.E.P § 2131, "a claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference."

In contrast to the present disclosure, Plant '798 discloses a protective member comprising an energy absorbing material (2) *encapsulated* in a single flexible envelope (3, 4). Accordingly, the absorbing material (2) of Plant '798 is prohibited from exiting envelope (3, 4) during energy or force absorption unless envelope (3, 4) ruptures, thus spilling absorbing material (2) and destroying the function for which it is intended. In other words, the absorbing material (2) is contained by the single flexible envelope (3, 4).

Accordingly, in view of the foregoing arguments, Applicant respectfully submits that claim 62 is not anticipated under 35 U.S.C. 102(b) over Plant '798 because Plant '798 fails to disclose all the limitation of claim 62 as required pursuant to M.P.E.P. § 2131. As such, the rejection of claim 62 as being anticipated under 35 U.S.C. 102(b) over Plant '798 has been overcome and should be withdrawn.

Since claims 63, 64, 73 and 75 depend, directly or indirectly, from claim 62, and contain all of the features of claim 62, for the reasons presented above regarding the allowability of claim 62, Applicant respectfully submits that claims 63, 64, 73 and 75 are also allowable under 35 U.S.C. 102(b) over Plant '798.

Claims 62-64 and 73-75 were rejected under 35 U.S.C. 102(e) as being anticipated by U.S. 2005/0037189 to Palmer (hereinafter, "Palmer '189"). Applicant submits that Palmer '189 is not a valid 102(e) reference for the purposes of anticipating claims 62-64 and 73-75 of the present application.

In support thereof, Applicants have submitted simultaneously herewith, a "Petition Under Rules 1.55(c) and 1.78(a)(3)" to accept an unintentionally delayed claim for priority. Applicant respectfully submits that the entire delay in filing said petition was unintentional.

In support of the Petition, Applicant wishes to draw the Examiners attention to the fact that the Substitute Specification, filed simultaneously with the nation phase filing of the present application, claimed benefit of and priority to International Application No. PCT/GB02/04209, filed on September 13, 2002, which in turn properly claims the benefit of and priority to GB Application Nos. 0122082.1 and 0122084.7, each filed on September 13, 2001, GB Application No. 0123844.3, filed on October 4, 2001.

Additionally, Applicant wishes to draw the Examiners attention to the fact that the Declaration claims priority to the underlying International Application as well as states that the present application is a national stage of a PCT Application.

Applicant respectfully submits that a clerical error occurred at the time of filing of the present application in which the present application was filed pursuant to 35 U.S.C. 111(a) instead of being filed pursuant to 35 U.S.C. 371.

In view of the foregoing, Applicant submits that it was Applicants intention for the present application to be filed pursuant to 35 U.S.C. 371 and not pursuant to 35 U.S.C. 111(a).

Accordingly, Applicant submits that the earliest possible priority date for Palmer '189 is December 22, 2001, the filing date of the British priority application, namely, GB 0130834.5 which does not pre-date the earliest priority date of the present application of September 13,

2001 for GB Application Nos. 0122082.1 and 0122084.7, and October 4, 2001 for GB Application No. 0123844.3, the applications from which the present application is entitled to priority.

Accordingly, in view of the foregoing, Applicant respectfully submits that Palmer '189 is not a valid 102(e) reference for the purposes of anticipating claims 62-64 and 73-75 of the present application and thus the rejection of claims 62-64 and 73-75 as being anticipated by Palmer '189 should be withdrawn.

Claims 62-64 and 73-75 were rejected under 35 U.S.C. 102(e) as being anticipated by U.S. Patent 6,701,529 to Rhoades (hereinafter, "Rhoades '529"). Applicant submits that claim 62, as originally presented, is allowable over Rhoades '529.

In contrast to the present disclosure, Rhoades '529 discloses a smart padding system comprising a novel material composition (12) packaged within a single containment (14). Accordingly, the novel material composition (12) of Rhoades '529 is prohibited from exiting containment (14) during energy or force absorption unless containment (14) ruptures, thus spilling novel material composition (12) and destroying the function for which it is intended.

Accordingly, in view of the foregoing arguments, Applicant respectfully submits that claim 62 is not anticipated under 35 U.S.C. 102(e) over Rhoades '529 because Rhoades '529 fails to disclose all the limitation of claim 62 as required pursuant to M.P.E.P. § 2131. As such, the rejection of claim 62 as being anticipated under 35 U.S.C. 102(e) over Rhoades '529 has been overcome and should be withdrawn.

Since claims 63, 64, 73, 74 and 75 depend, directly or indirectly, from claim 62, and contain all of the features of claim 62, for the reasons presented above regarding the allowability of claim 62, Applicant respectfully submits that claims 63, 64, 73, 74 and 75 are also allowable under 35 U.S.C. 102(e) over Rhoades '529.

Claims 65-68 and 70 were rejected under 35 U.S.C. 103(a) as being unpatentable over Palmer '189 in view of U.S. Patent 5,589,245 to Roell (hereinafter "Roell '245"). Applicant respectfully submits that claims 65-68 and 70 are each patentable over Palmer '189 in view of Roell '245.

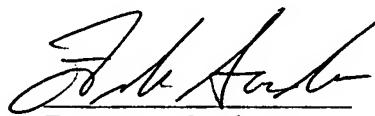
As discussed above, Palmer '189 fails to pre-date the present application. Accordingly, Palmer '189 may not be combined with Roell '245, in any proper manner, to render claims 65-68 and 70 obvious. Accordingly, Application requests that the rejection of claims 65-68 and 70 as being obvious over Palmer '189 in view of Roell '245 is improper and should be withdrawn.

Moreover, since claims 65-68 and 70 depend, either directly or indirectly, from independent claim 62 and contain all of the limitations of claim 62, Applicant respectfully submits that claims 65-68 and 70 are also allowable over Palmer '189 in view of Roell '245.

Should the Examiner believe that a telephone interview may facilitate resolution of any outstanding issues, the Examiner is respectfully requested to telephone Applicants' undersigned attorney at the number indicated below.

In view of the foregoing amendments and remarks, reconsideration of the application and allowance of all claims 62-70 and 73-75 is earnestly solicited.

Respectfully submitted,



Francesco Sardone  
Registration No. 47,918  
Attorney for Applicant

*Carter, DeLuca, Farrell & Schmidt, LLP*

445 Broad Hollow Road, Suite 225

Melville, NY 11747

Tel.: (631) 501-5700

Fax.: (631) 501-3526

FS/nr